

NOT FOR PUBLICATION

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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

United States of America,)	
)	
Plaintiff,)	
)	
v.)	Crim. No. 2002-53
)	
Bernard Christie Wray,)	
)	
Defendant.)	
)	

ATTORNEYS:

Sarah L. Weyler, AUSA, Esq.
St. John, U.S.V.I.
For the plaintiff,

Judith L. Bourne, Esq.
St. Thomas, U.S.V.I.
For the defendant.

MEMORANDUM

Moore, J.

Defendant Bernard Christie Wray ["Wray" or defendant"] has moved to dismiss the indictment against him. The government opposes defendant's motion. For the reasons set forth below, I will deny defendant's motion to dismiss.

I. BACKGROUND

On March 22, 2002, Wray arrived in St. Thomas from St. Maarten, Netherlands Antilles. He presented himself and two seemingly identical suitcases to U.S. Customs agents. During a routine border inspection, the Customs agents noticed that one of

the suitcases felt and weighed differently than the other. Upon x-raying Wray's luggage, the agents discovered concealed sections on the sides and bottoms of the suitcases. The agents then opened the suitcases and found wrapped bundles of currency. It was later determined that Wray was carrying \$120,856.00. According to the government, when confronted with his declaration form stating that he was not carrying over \$10,000 in U.S. currency, Wray admitted that he intentionally failed to declare the currency. The government has charged Wray with knowingly concealing more than \$10,000 in currency in violation of 31 U.S.C. §§ 5316 and 5332, knowingly and willfully making a materially false/fraudulent statement to U.S. Customs agents in violation of 18 U.S.C. § 1001(a) and a forfeiture count under 31 U.S.C. § 5332(b). This Court has federal question jurisdiction under section 22(a) of the Revised Organic Act of 1954¹ and 28 U.S.C. § 1331.

¹ 48 U.S.C. § 1612(a). The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp.2001), *reprinted in* V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp.2001) (preceding V.I. CODE ANN. tit. 1).

II. DISCUSSION

A. USA Patriot Act Includes Acts Committed in the Virgin Islands

Wray argues that Count One should be dismissed because his acts do not constitute violations of either sections 5316 or 5332 of the United States Code ["Code"].² Wray notes that section 5332 provides:

Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than \$10,000.00 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside of the United States, or from a place outside the United States to a place within the United States, shall be guilty of a currency smuggling offense
. . . .

31 U.S.C. § 5332(a)(1). Defendant emphasizes that section 103 of title 31 of the Code states that the "'United States', when used in a geographic senses, means the States of the United States and the District of Columbia" for purposes of title 31. As the U.S. Virgin Islands is not a state, Wray argues that the Virgin Islands is not "a place within the United States" and, therefore, he cannot have violated section 5332 by bringing a suitcase containing over \$120,000 into St. Thomas from St. Maarten.

² Defendant further argues that as Count Three is wholly dependent on a conviction under Count One, Count Three is unsustainable.

The government counters that section 5312(a)(5) of the USA Patriot Act ["Patriot Act"], not section 103, defines "United States" for purposes of anti-money laundering offenses. When Congress enacted the Patriot Act last October to strengthen the nation's money laundering laws to aid in the fight against international terrorism, it re-enacted the section under which Wray is charged. See Patriot Act, Pub. L. 107-56, title III, §§ 301-377, 115 Stat. 336 (2001) (codified at 31 U.S.C. § 5311-5332). Section 5312(a)(5), which is identical to its original version as found at section 5312(5) of Public Law 97-258 (enacted September 13, 1982), provides

"United States" means the States of the United States, the District of Columbia, and when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.

31 U.S.C. § 5312(a)(5).³ Although section 5312(a)(5) is within title 31, it merely supplements the definition of "United States" in section 103. These sections are not in conflict.

Even if section 5312(a)(5) were to conflict with section 103 and, therefore, the definition of "United States" were held

³ The Secretary of the Treasury has used the authority given to him by Congress to expand the definition of "United States" to the territories. See 31 C.F.R. § 103(nn) ("*United States*. The States of the United States, the District of Columbia, the Indian lands . . . and the Territories and Insular Possessions of the United States.") (emphasis in original).

ambiguous,⁴ the language of the Patriot Act is clear that Congress reaffirmed its intent to expand its criminal laws to the U.S. possessions while it refined and strengthened the nation's money laundering laws.⁵ I find nothing in the Patriot Act or title 31 to indicate that Congress intended to limit the definition of the "United States", thereby facilitating the use

⁴ Cf. *United States v. Ahumado-Avendano*, 872 F.2d 367, 371 (11th Cir. 1989) (finding the term "United States" as used in the Maritime Drug Law Enforcement Act, 46 U.S.C. §§ 1901-1904, ambiguous).

⁵ In hearings both before and after the enactment of the Patriot Act, congressional leaders and executive officials noted that these new laws were designed to stem the flow of money to terrorist and other criminal organizations. See *The Financial War on Terrorism and the Administration's Implementation of the Anti-Money Laundering Provisions of the USA Patriot Act Before Comm. on Banking, Hous. and Urban Affairs*, 107th Cong., 2d Sess. (2002) (statement of Senator Paul Sarbanes) ("The U.S. must lead both by example and by promoting concerted international action. Our goal must be not only to apprehend particular individuals, but to cut off the pathways in the international financial system along with terrorist and other criminal money moves."), at http://banking.senate.gov/02_01hr/012902/sarbanes.htm; *id.* (statement of Representative John J. LaFalce) ("[T]he Treasury Secretary's new, more flexible anti-money laundering powers will enable law enforcement to tackle with much more effectiveness abuses of our financial system by terrorists and criminals."), at http://banking.senate.gov/02_01hr/012902/lafalce.htm; *id.* (statement of Kenneth W. Dam, Deputy Secretary of the Treasury Department) ("The Act . . . strengthens existing money laundering provisions and enhances the Treasury Department's ability to deal with th[e] problem [of money laundering]. . . . In all, the Act enables us to fulfill our mission of thwarting the criminal use of the financial system in a way that was unavailable or impossible before October 25, 2001."), at http://banking.senate.gov/02_01hr/012902/dam.htm; *id.* (statement of Michael Chertoff, Assistant Attorney General, Criminal Division, Department of Justice) ("Title III of the PATRIOT Act has provided law enforcement with important new authority to investigate and prosecute the financing of crime, including terrorism."), at http://banking.senate.gov/02_01hr/012902/chertoff.htm; *Hearing on the Administration's "National Money Laundering Strategy for 2001" Before Comm. on Banking, Hous. and Urban Affairs*, 107th Cong., 1st Sess. (2001) (statement of Senator Carl Levin) (noting the need to strengthen existing money laundering laws), at http://banking.senate.gov/01_09hr/092601/levin.htm; *id.* (statement of Representative Marge Roukema) (noting the inadequacies of existing money laundering legislation), at http://banking.senate.gov/01_09hr/092601/roukema.htm.

of America's possessions as money havens for terrorist and criminal organizations. Therefore, I have no doubt that Congress intended violations of federal customs laws in the Virgin Islands and other U.S. territories to be prosecuted. Accordingly, I will deny defendant's motion to dismiss Counts One and Three of the indictment.

B. Virgin Islands Customs Laws Are Within the Jurisdiction of the Federal Government

Section 1001(a) of title 18 of the Code makes it an offense to knowingly and willfully make materially false statements "in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States." Here, Wray is charged with lying to customs agents regarding the amount of currency on his person. The defendant creatively argues that section 1001(a) is inapplicable here because the matter is not within the jurisdiction of the federal government.

Wray contends that customs agents in the Virgin Islands perform two distinct functions. According to the defendant, customs agents perform pre-entry inspections of individuals traveling to the mainland in accordance with U.S. customs laws. Moreover, these customs agents also enforce Virgin Islands customs laws on items brought into the Virgin Islands from foreign countries. In support of his argument, Wray points to the language of section 36 of the revised Organic Act of 1936,

which provides: "Until Congress shall otherwise provide, all laws concerning import duties and customs in the municipality of St. Thomas and St. John now in effect shall be in force and effect in and for the Virgin Islands." 1936 Organic Act § 36, *reprinted in* V.I. Code Ann., Historical Documents, 68 (1967), 48 U.S.C. § 1406i ["1936 Organic Act"]. As Wray traveled to the Virgin Islands and was not in transit to the mainland, he argues that the customs agents were performing purely local functions and were under Virgin Islands authority rather than federal authority.

Defendant's emphasis of the fact that customs duties are paid into the treasury of the Virgin Islands in support of his argument that customs laws should be considered local by nature is misplaced, for it

overlooks the fact that section 28(a) also permits the V.I. government to retain and disburse the proceeds of the U.S. income tax and passport, immigration and naturalization fees, all of which are clearly federal in origin. Indeed, the fact that the customs duties at issue here are included in section 28(a) with these indisputably federal fees and taxes suggests that the customs duties are federal in nature.

Paradise Motors, Inc. v. Murphy, 892 F. Supp. 703, 709 (D.V.I. 1994). Thus, Wray's characterization of customs laws within this territory as "local" is misguided. Even though the customs laws in place are carry-overs from Danish rule, this did not, in and of itself, create local customs laws. On the contrary, the

federal government has maintained jurisdiction over these laws since the sale of the Territory to the United States. This Court has previously found that "Congress has consistently asserted its authority over the assessment of customs duties on articles imported into the Territory." *See Paradise Motors*, 892 F. Supp. at 706; *see also United States v. Hyde*, 37 F.3d 116 (3d Cir. 1994). Moreover, the executive branch maintains jurisdiction over the administration of customs laws within the Virgin Islands by virtue of the language of section 36 of the 1936 Organic Act - language that the defendant conveniently omitted from his argument:

Provided, That the Secretary of the Treasury shall designate the several ports and sub-ports of entry in the Virgin Islands of the United States and shall make such rules and regulations and appoint such officers and employees as he may deem necessary for the administration of the customs laws in the Virgin Islands of the United States.

1936 Organic Act § 36. Therefore, as the Supreme Court has consistently stated that the term "within the jurisdiction of" for purposes of section 1001 should be interpreted liberally, I reject the defendant's argument for a narrow reading of the statute as it applies to the Virgin Islands. *See United States v. Rodgers*, 466 US 475, 480 (1984); *Bryson v United States*, 396 US 64, 70-71 (1969). Therefore, I will deny the defendant's motion to dismiss Count Two of the indictment.

III. CONCLUSION

I find that Congress intended acts occurring in the Virgin Islands that constitute violations of customs laws to be included within the term "a place within the United States", and, thus, punishable under federal law. In addition, I find that the defendant's false statements to U.S. Customs agents involves a matter within the jurisdiction of the federal government. Therefore, I will deny the defendant's motion to dismiss the indictment.

ENTERED this 17th day of June, 2002.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

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St. John, U.S.V.I.

For the plaintiff,

Judith L. Bourne, Esq.

St. Thomas, U.S.V.I.

For the defendant.

ORDER

For the reasons set forth in the foregoing Memorandum of
even date, it is hereby

ORDERED that defendant's motion to dismiss the indictment is
DENIED.

ENTERED this 17th day of June, 2002.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

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Order
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ATTEST:
WILFREDO F. MORALES
Clerk of the Court

By: _____/s/_____
Deputy Clerk

Copies to:
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Mrs. Jackson
Sarah L. Weyler, Esq.
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Michael Hughes